

ATTACHMENT A

Attachment A consists of comments submitted by Jeff Appel on behalf of Nicole and Brad Davis and FHWA responses to those comments.

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Comments on the 11400 South FEIS from Jeff Appel, on behalf of Nicole and Brad Davis, and FHWA's Responses

Comment	FHWA Response
<p>These comments are provided on behalf of Nicole and Brad Davis, as well as other citizens who live near or who will be significantly and negatively impacted by the improvements contemplated by the preferred alternative selected in the Final Environmental Impact Statement ("FEIS").</p>	<p>In the absence of the identification of other individuals or organizations, these comments are accepted as being submitted by and on behalf of Nicole and Brad Davis.</p>
<p>Much like the 2000 Environmental Assessment and Section 4(f) Evaluation ("EA/4f"), this process is a culmination of a seriously deficient planning process and was conducted in violation of the operative law and regulations. It also continues to reflect notable agency bias toward alternatives that require the construction of an interchange on I-15, together with a crossing of the Jordan River by a bridge and the widening of 11400 South to 5-lanes.</p> <p>We believe significant and illegal flaws exist with respect to, among other issues, the selection of the study area, the formulation and implementation of purpose and need, the selection of alternatives and the 4(f) analysis. It appears to us that the effort was designed from the outset to reach the precise outcome and using the same process and procedures that were ruled invalid by the Tenth Circuit Court of Appeals in <i>Davis v. Mineta</i>, 302 F.3d 1104, 1121 (10th Cir. 2002). We will now turn to specific problems with the document.</p>	<p>1. FHWA and UDOT conducted an extensive and objective analysis of the proposed project and a reasonable range of alternatives, and believe the FEIS presented for public review is legally sufficient and technically sound. The FEIS was prepared consistent with the procedural and planning requirements of NEPA, Section 4(f), and the FHWA and UDOT regulations and guidance. The FEIS specifically describes the inadequacies in the prior NEPA/4(f) Evaluation as found by the court in the <i>Davis v. Mineta</i> decision, and the steps taken to address those inadequacies, FEIS at ES-1 to ES-2 & 1-2 to 1-4. The agencies went to considerable effort throughout the process to ensure that the FEIS would be fully responsive to the court's decision. The FHWA and UDOT also believe that their efforts to involve and respond to the concerns of the public and other agencies during the NEPA process, as documented in the FEIS at Chapter 6, went well beyond what is legally required. As a result, the FEIS and Selected Alternative are not only legally adequate, but they have gained acceptance by virtually all of the stakeholders and by all of the reviewing and consulting agencies. Indeed, from the several hundred people who provided written comments during scoping and the draft EIS (DEIS) comment period, attended the public and stakeholder meetings, or otherwise were involved in the NEPA process, the agencies received only a single letter on the FEIS/4(f) Evaluation that was critical of that document or of the Preferred Alternative, which is the letter of this commenter. In addition, none of the state or federal agencies that were involved in the NEPA process was critical of the final FEIS/4(f) Evaluation or Preferred Alternative. To the extent some of these agencies expressed concerns at the DEIS stage, all major concerns were addressed to the satisfaction of the commenting agencies.</p>
<p>1. <u>Project Study Area</u>. While the FEIS claims to have reviewed a larger study area than was reviewed in the EA/4(f), that is clearly not the case.</p>	<p>2. The commenter is mistaken. The study area in the EA/4(f) consisted of the 11400 South corridor, from I-15 to Redwood Road, and the I-15</p>

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<p>The study area that received scrutiny for traffic improvements in the EA/4(f) was 9800 South to 12300/12600 South. However, as we stated in our comments on the EA/4(f), the study area must be considerably larger and must be reconfigured to meet the requirements of law.</p>	<p>corridor from 11400 South to 12300 South. The study area is shown graphically in numerous places in the EA/4(f) document, including Figures 1-1 and 3-1 to 3-3. The study area evaluated in the FEIS is a much larger area that extends from 12300/12600 South to 10400/10600 South, and from Bangerter Highway to 700 East. This study area meets the requirements mandated by the 10th Circuit in <u>Davis v. Mineta</u>. Notably, at no time during the EIS process, including during the scoping process or in comments on the DEIS, did the commenter or any other stakeholder express concern regarding the size of the study area or the scope of the EIS.</p>
<p>We first question why the portion of the study area from I-15 to 700 East is included in the document at all. This area presents different and separate problems from those presented on the western side of I-15 and there exist separate solutions that are unrelated to the preferred alternative. It appears it was inserted solely as window dressing for the preferred alternative, but it is functionally irrelevant to the purposes and needs facing the larger area.</p>	<p>3. 700 East was included as the eastern boundary so that the traffic analysis of I-15 and the area just east of I-15 would be included in the study, since traffic on and around I-15 contributes to mobility problems in the study area. As shown in the traffic modeling conducted for the FEIS, three major intersections just east of I-15 and the entire I-15 corridor within the project study area will be at or over capacity under the 2030 No Build condition. The traffic analysis presented in the FEIS shows that several of the proposed Build Alternatives will improve mobility at these intersections. In addition, one alternative (the Preferred Alternative) will improve or maintain mobility on I-15 through the study area.</p>
<p>It appears to us that the creation of a viable study area was artificially constrained and, thus, is minimally useful with respect to devising solutions for the regional problems articulated in the document. It is apparent that 10400/10600 South and 12300/12600 South are the source of many of the problems articulated throughout this document as the basis for “need”. Obviously, if the problems arise at those locations, then an area larger than the selected study area must be reviewed in detail to fully present adequate solutions and alternatives. You must move noticeably North and South of those locations to create a viable study area.</p>	<p>4. NEPA requires an agency to evaluate a reasonable range of alternatives. Likewise, 23 U.S.C. 138 requires USDOT agencies to consider all prudent and feasible alternatives to the use of 4(f) lands. The physical boundaries of this range and what is a prudent 4(f) alternative is dictated by the project’s purpose and need.</p> <p>As stated on Page 1-4 of the FEIS, the study area boundaries were selected to address the purpose and need, and to allow a range of reasonable alternatives, in accordance with NEPA. 10400/10600 South and 12300/12600 South were selected as the northern and southern boundaries because these are the closest major east-west arterials to the 11400 South area, and because they provide the nearest crossings of the Jordan River within the study area. Projects farther north of 10600 South and south of 12300 South would not address mobility problems in the area. The traffic analysis presented in the FEIS shows that the proposed Build Alternatives will sufficiently improve mobility along both 10400/10600 South and 12300/12600 South.</p> <p>The study area is also consistent with the decision in <u>Davis v. Mineta</u>,</p>

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	<p>where the court suggested that subsequent NEPA/4(f) analysis should potentially consider east west capacity improvements across the Jordan River corridor at 9800 South, where no crossing then existed, and at the existing crossings at 10600 South and 12300 South. As noted in the FEIS, since the decision in <u>Davis v. Mineta</u> a bridge crossing and expanded four lane roadway have been constructed across the Jordan River at 9800 South, and all traffic measurements and modeling for the FEIS/4(f) Evaluation take those improvements into account. In light of the new crossing at 9800 South, it was reasonable and consistent with <u>Davis v. Mineta</u> to choose a study area bounded by 10600 South and 12300 South, with various upgrades to those roadways considered in the FEIS/4(f) alternative analysis.</p>
<p>There is obviously a significant regional component to the purpose and need in this document. It is the southwest quadrant of the Salt Lake Valley that is at issue and those boundaries should define the study area. It also appears to us that a combination of Bangerter Highway and the Mountain View Corridor Highway can and should operate as a substitute for, or alternative to I-15 regarding movement of North/South traffic in a major portion of this larger unstudied area, as well as the selected study area. Those roads will provide the North/South conduit you claim people are searching for when they travel East and West from I-15. Those people will not travel to and from I-15 from much of the study area after the construction and expansion of those transportation improvements. This solution, when coupled with the projects included in the no-build alternative, such as light rail and other mass transit that is planned for the area, will cause much or all of the East/West traffic "need" you claim justifies the preferred alternative to evaporate.</p>	<p>5. Future transportation needs are determined by using traffic models, which contain assumptions about future population, employment, housing, and jobs. The traffic study prepared for this FEIS used the most current WFRC long range transportation demand model available, based on the year 2030 as the future condition. The WFRC model incorporates information from the Cities' master plans, and assumes that all of the projects included in the WFRC 2030 Long Range Plan (LRP), with the exception of the 11400 South corridor improvements and freeway interchange, will be constructed. These projects include the Mountain View Corridor (MVC) and other highway projects, the Mid-Jordan and Draper extension light rail projects, and the proposed commuter rail project. The model assumes that construction on 12300 South has been completed (modification of interchange from a diamond interchange to a single-point urban interchange and widening of 12300/12600 South), and that 10400 South from Redwood Road to Bangerter Highway has been widened to four lanes with a center turn lane. The traffic analysis shows that under the No Build scenario, there will be mobility problems within the study area, including significant east/west mobility problems, even after all the planned roadway and transit projects identified on the LRP (including Mountain View, Bangerter, light rail and commuter rail) have been completed.</p>
<p>This conclusion is bolstered by the public statements of UDOT officials and their consultants in the course of the Mountain View Corridor presentations to the various cities in the area. They have publicly stated that they are trying to solve a North/South connectivity problem and the East/West connectivity is not much of an issue. It is time to come to grips with the actual regional "needs" of the larger area and it is time to</p>	<p>6. Prior to responding to this comment, the project manager of the Mountain View Corridor (MVC) project was consulted. The commenter is correct that the MVC project addresses primarily north-south connectivity issues in Salt Lake County, as stated in the MVC project's purpose and need statement. However, the MVC team indicates that for purposes of planning and analyzing the MVC project, it is assuming that</p>

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<p>stop articulating needs solely to build a specific project. <i>See Kleppe v. Sierra Club</i>, 427 U.S.390, 409 (1976); <i>See also Natural Resources Defense Council Inc. v. Hodel</i>, 435 F. Supp. 590 (D. Or. 1977).</p>	<p>all of the other projects in the LRP will be implemented. This includes the LRP projects that would work to address east-west flow issues, such as the 11400 South Project and improvements to 10600 South and 12300 South. We have not been able to locate a record of the public statement to which the commenter refers; however, any statement by the MVC project team regarding east-west traffic flow must be taken in context of the MVC team's assumption that east-west congestion will be addressed primarily by other planned projects. As previously noted, the modeling done for the 11400 South FEIS indicates that in the absence of significant improvements like those that make up the Preferred Alternative, there will be significant and worsening east-west congestion at intersections and interchanges in the 11400 South study area, even with the completion of all the other improvements of the LRP, including the MVC project.</p>
<p>2. Purpose and Need. The purpose of this project is stated as follows on the face page of the FEIS:</p> <p style="padding-left: 40px;">The purpose of this project is to maintain, protect, and improve the quality of life in the study area by improving mobility and providing transportation infrastructure to support economic development within the study area through the year 2030.</p> <p>The need is expressed as follows at page 1-5:</p> <p style="padding-left: 40px;">A traffic analysis of current conditions within the study area was conducted and modeling of future traffic conditions through 2030 was completed. These studies show that there are three major intersections and two interchanges within the study area that currently operate at or over capacity during the afternoon rush hour (4:00 p, to 6:00 pm), and one interchange that operates at or over capacity during both the morning (7:00 am to 9:00 am) and afternoon rush hours. By 2030, ten major intersections and two interchanges within the study area are expected to be at or over capacity during morning and/or afternoon rush hours (see Section 1, Table 1-2 and Figure 1-5). This congestion is expected to cause difficulties and delays in commuting to work and traveling to local destinations, as well as reductions in emergency service response times, all resulting in adverse impacts to quality of life.</p> <p>We question whether this purpose and need as articulated is legitimate at all and are convinced it does not justify the selection of the preferred</p>	<p>7. The appropriate public transportation agencies have inherent discretion to develop the project's purpose and need. However, in this case the project's purpose and need was also developed based on input received from the public, elected officials, and city representatives, and based on a thorough traffic analysis of current and projected (year 2030) mobility conditions within the project study area. Efforts made to solicit public input on development of the project purpose and need included holding focus groups with area citizens, conducting a 1000-person telephone survey within the study area, holding small group meetings with community interest groups and city representatives, meeting with elected officials, and holding public scoping meetings.</p> <p>The goals of improving mobility and providing transportation infrastructure to support economic development and improve quality of life are consistent with the missions of both FHWA and UDOT, under federal and state law, and with local planning needs, plans and policies. As stated on Pages 1-5 and 1-6 of the FEIS, per the Transportation Equity Act of 1998 (TEA-21), §135(c)(1):</p> <p style="padding-left: 40px;">“Each State shall carry out a transportation planning process that provides for consideration of projects and strategies that will:</p> <p style="padding-left: 80px;">(A) support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;</p> <p style="padding-left: 80px;">(B) increase the safety and security of the transportation system for</p>

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alternative. At a minimum, it is overly vague and indeterminate and appears to be a simplistic pretext for selecting the preferred alternative. It is not subject to specific definition and therefore is not useful as a basis for the formulation of a viable EIS and Section 4(f) analysis. While mobility, if properly defined, may constitute a legitimate purpose and need, it is not legitimately utilized here.

Economic development is simply not a legitimate purpose and need, especially when it is tied to quality of life, as it is in this document. Quality of life is far too subjective to be used as a purpose and need and only serves to create confusing results and an unsupportable document. This conclusion is supported by the fact that the document states people desire a peaceful, residential area as a major attribute of their quality of life, yet the solution presented in the document is to emplace a 5-lane highway through the center of this very residential area. This result illustrates not only the problems with the purpose and need statements, but also demonstrates the implausibility of the document. In this context, mobility, quality of life and economic development are not simply competing needs, they are diametrically opposed needs that will never achieve mutual resolution or satisfaction.

motorized and nonmotorized users;

(C) increase the accessibility and mobility options available to people and freight;

(D) protect and enhance the environment, promote energy conservation, and improve quality of life;

(E) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(F) promote efficient system management and operation; and

(G) emphasize the preservation of the existing transportation system.”

Per Utah Code Section 72-1-201, UDOT plans, develops, constructs, and maintains “state transportation systems that are safe, reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and industry.” In addition, according to city officials, continued economic development is necessary to provide additional employment opportunities and adequate access to goods and services for current and future residents within the study area. Increased sales tax revenue is needed to allow cities to continue providing necessary public services and quality of life enhancements to the growing residential population. Increasing access and mobility will increase the number of new businesses and regional square feet of retail space available. In light of these federal, state and local laws, policies and objectives, it was fully appropriate to include “improving mobility and providing transportation infrastructure to support economic development and improve quality of life” in the purpose and need statement. Finally, the legal case law holds that economic development is a valid component of purpose and need.

While the project purpose and need is more broadly stated on page 1-5, pages 1-23 and 1-24 of the FEIS identify how alternatives were to be evaluated to determine how well they would meet the project purpose and need. In order to meet the project purpose and need for improving mobility within the study area, a proposed alternative must reduce travel times within the study area over the No Build Alternative. In addition, a proposed alternative should reduce the number of intersections at or over capacity within the study area in the design year over the 2030 No Build conditions. Improvements to mobility on I-15 through the study area would also contribute to meeting the project purpose and need. A

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	<p>proposed alternative can be shown to meet the project purpose and need of providing transportation infrastructure to support economic development if, in addition to improving mobility, it can be demonstrated that it will support retail development and that it will contribute to additional sales tax revenues over the No Build Alternative.</p> <p>Another reason for stating the purpose and need rather broadly was to be consistent with the <u>Davis v. Mineta</u> decision, which warned against stating purpose and need so narrowly that only alternatives that included a new river crossing at 11400 South could be considered.</p>
<p>As to mobility, a fair reading of the document reveals that mobility issues within the study area may be fully solved without a river crossing, 5-lane road and interchange located at 11400 South. It is equally clear from the document that the no-build alternative, with perhaps a few additional improvements, will take care of the economic development specifically contemplated in the document, absent the enormous negative consequences created by the preferred alternative.</p>	<p>8. Tables 1-2 and 1-3 and Figures 1-5 and 1-6 of the FEIS show where the mobility problems currently exist within the study area and where they will exist in the future under the No Build Alternative, based on regional travel demand modeling for 2030. As stated previously, the 2030 No Build condition assumes that MVC and the other roadway projects listed in the WFRM LRP (with the exception of the proposed 11400 South improvements and interchange) and the future light rail and other transit projects listed on the LRP will be constructed. This modeling indicates that even with all of these other projects completed, there will be mobility problems within the study area under the No Build scenario.</p> <p>Regarding economic development, it is notable that no alternatives were screened out from further consideration based on a failure to adequately support economic development. The differences among the alternatives with respect to the estimated degree to which they would support additional economic development, beyond what is likely to occur under the No Build, are set forth in the FEIS at pages ES-1 and 4-23 to 4-24.</p>
<p>Table 1-2 sets forth the intersections that are at or over capacity and seemingly exists to justify the purpose and need. However, it does not in any fashion justify the need for the interchange, the river crossing or the widening of 11400 South, as it is clear from this chart that those improvements will do little or nothing to resolve the articulated problems. In fact, the overcapacity problems relate primarily to roads near the 1-15 such as Lone Peak Parkway/Jordan Gateway, State Street at 10600 South, 1-15 interchanges and also to 1300 West and intersections along 10400/10600 South and 12300/12600 South. These are separate problems that possess their own needs. They will require separate solutions, which are unrelated to any claimed mobility needs inside of the study area.</p>	<p>9. Section 1 of the FEIS identifies the purpose and need for the project, and is not a justification for the selection of the Preferred Alternative. Section 2 identifies the alternatives evaluated and it clearly shows that the interchange and river crossing <u>do improve mobility</u> within the study area, including along I-15.</p>

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<p>A review of Figure 1-5 makes this plain. The improvements need to be made between 1-15 and Lone Peak Parkway/Jordan Gateway, on 1300 West and to 10400 and 12600 South, not on 11400 South from Lone Peak Parkway/Jordan Gateway to Bangerter. A review of Table 1-3 and Figure 1-6 also makes it clear that improvements are only needed at these locations and also to Redwood Road and 2700 West. Nothing here serves to justify the need for the preferred alternative.</p>	<p>10. Figures 1-5 and 1-6 identify where problems currently exist and will exist in 2030 under the No Build scenario. Based on the traffic analysis performed for the preliminary alternatives, it is apparent the current condition of 11400 South not continuing over the river is contributing to many of the mobility problems along the other corridors in the study area. Tables 2-2 and 2-3 in Section 2 show how each of the 12 preliminary alternatives will improve mobility at each of those problem areas. As stated previously, these tables clearly show that the interchange and river crossing <u>do improve mobility</u> within the study area, including along I-15.</p>
<p>As to economic development, the same conclusion obtains. We do not need the preferred alternative to reach this goal.</p>	<p>11. As to providing the transportation infrastructure to support economic development, the economic analysis in Section 4.4 shows how each of the Build Alternatives will impact sales tax revenue and regional retail square footage development within each of the study area cities. It is clear from the analysis presented in Section 4.4 that the Preferred Alternative will have the greatest positive impact over any of the Build Alternatives or the No Build Alternative on annual sales tax revenue and regional retail development space.</p> <p>Figures 3-1a, 3-1b, and 3-1c are a series of historic, current, and planned development patterns in the study area. Discussions presented in Sections 3.1.1 through 3.1.4 describe each city's portion of the study area, specifying ongoing or near-future development projects.</p>
<p>By way of background, one of the flaws in the 2000 EA/4(f), as articulated by the Tenth Circuit in <i>Davis</i>, was the use of growth numbers in a large area to justify improvements within the smaller area of 11400 South Corridor. This flaw has been exacerbated here. The growth numbers for all four cities — Sandy, Draper, Riverton and South Jordan were used to justify the need for improvements in the study area. As in <i>Davis</i> there is no documentation or information presented to justify the “need” within the study area itself. This approach was rejected in <i>Davis</i>. A careful review of the document reveals that the “needs” in Sandy City are unrelated to the improvements in the preferred alternative and, in fact, most of the development in Sandy City will occur outside of the study area (1-17). The same is true for Riverton and Draper, in that the needs for each of those cities with respect to economic development will be otherwise served (1-18 and 1-19). The document reveals that even South Jordan does not require construction of the preferred alternative, if you review the planned development set forth on page 1-20. All of this</p>	<p>12. The description and discussion of planned development in Sandy, Riverton, Draper and South Jordan, in the Purpose and Need Section of the FEIS at pages 1-17 to 1-20, distinguishes between the development projects that will occur within the study area and outside of the study area, and the locations of development projects are also readily apparent in Figure 1-7. These development projects are included in the Purpose and Need Section both because they are expected to generate traffic that will contribute to the need for improved mobility in the study area, and because they will in turn benefit from improved mobility in the study area, which will provide economic and other benefits to the cities and community. The FEIS does not state that these developments “require” or would not be built without the Preferred Alternative, but instead explains that the mobility improvements that would result from the Preferred Alternative, and to a lesser degree from the other alternatives, would support these developments and contribute to their success. Making improvements only to Jordan Gateway, Bangerter</p>

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<p>development can be facilitated by improvements to Jordan Gateway, Bangerter Highway and 10600 South. The needs detailed in the document, such as they are, do not in any fashion justify or require the preferred alternative.</p>	<p>Highway and 10600 South would not adequately improve mobility within the study area.</p>
<p>It is our opinion that economic development may seldom be used as a legitimate purpose and need for transportation improvements. However, if it is to be utilized, it must by definition anticipate changes in growth patterns, induced growth, use conversions and significant impacts to community values and community attributes. Virtually none of these issues and significant impacts were adequately detailed and discussed and the impacts thereof are not arrayed and reviewed among the various selected alternatives.</p>	<p>13. The project purpose and need includes providing the transportation infrastructure to support economic development. As discussed previously, this purpose and need is consistent with both federal and state requirements. As documented in the FEIS, according to city officials, continued economic development is necessary to provide additional employment opportunities and adequate access to goods and services for current and future residents within the study area. In addition, increased sales tax revenue is needed to allow cities to continue providing necessary public services and quality of life enhancements to the growing residential population.</p> <p>The FEIS (Figure 1-7) shows areas of existing office/retail/commercial development in the study area, as well as planned future development, including residential in and adjacent to the study area. As stated on Page 1-17 of the FEIS, this information was obtained from city master plans and zoning plans. The direct and indirect impacts, changes to land use, and community impacts for each of the Build Alternatives are identified in Sections 4.4.4, 4.1, and 4.3, respectively, of the FEIS. However, as previously noted the land use and zoning provisions for the study area cities are not expected to be changed as a result of implementing the proposed action. Those areas identified for development are expected to develop in accordance with each city's zoning and land use plans. Concern over impacts to community cohesion were received on the DEIS. These comments and responses are included in Appendix B of the FEIS. Additionally, Section 4.3.1 discusses impacts to community cohesion for each alternative; and Section 4.3.1.1 discusses mitigation measures for these impacts.</p>
<p>In summary, the purpose and need section of the FEIS does not adequately demonstrate what purpose will be served and what need will be met by the preferred alternative and the document fails at the outset under applicable law. A clear and well supported purpose and need section, in contrast to this document, should explain to the public and decisionmakers that the expenditure of funds is necessary and worthwhile and that the priority the project is being given relative to other needed highway projects is warranted.</p>	<p>14. As noted in the above responses, the project purpose and need, which was developed after a thorough public process, has been clearly stated, is consistent with state and federal requirements and local planning processes, and allows for a broad range of alternatives, as required by NEPA. Prioritization of projects on a systemwide, regional basis is done in the transportation planning process which for the Salt Lake area is within the authority of the Wasatch Front Regional Council. The WFRC is the Metropolitan Planning Organization and is made up of</p>

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	local governments within five counties along the Wasatch Front, and professional planning staff. The WFRC, in developing a fiscally constrained long range transportation plan and transportation improvement program, sets the priorities for completion of transportation improvement projects, based on a ranking of regional transportation system needs. This process is summarized in Section 1.2 of the FEIS.
Importantly, the project purpose and need controls the process for alternatives consideration, in depth analysis, and ultimate selection. The Council on Environmental Quality (CEQ) regulations 40 CFR 1500-1508 require that the EIS address the “no-action” alternative and “rigorously explore and objectively evaluate all reasonable alternatives.” A clearly stated purpose and need is vital to meeting these requirements, otherwise it would be difficult if not impossible to determine which alternatives are reasonable, prudent and feasible. Here it is impossible to dismiss the no-build alternative as viable because of the inadequate purpose and need articulated in the document.	15. The existing and No Build future mobility problems have been clearly documented in the FEIS. Under the No Build scenario, by 2030 there are ten major intersections and two interchanges within the study area expected to be at or over capacity during morning and/or afternoon rush hours. This congestion is expected to cause difficulties and delays in commuting to work and traveling to local destinations, as well as reductions in emergency response times. The No Build Alternative does not solve the mobility problems within the study area and is therefore not considered a prudent and feasible alternative.
3. <u>Alternatives</u> . This section of the document is also fundamentally flawed. The problem arises initially because the screening analysis was performed on the standard reasonable alternative basis (albeit stilted), with an obvious bias toward the preferred alternative, based on an inappropriate purpose and need. Then, with the remaining few alternatives that survived that process (and the bias of the agencies), an attempt was made to apply the stricter 4(f) standards. That approach resulted in early elimination and abandonment of feasible and prudent alternatives in the screening analysis. Based upon the approach selected, there was no chance all of the feasible and prudent alternatives would survive to be fully analyzed. They did not and they were not.	16. A broad array of alternatives was initially considered to address the goals and objectives contained in the purpose and need statement for the 11400 South Project. The project team considered the initial transportation options, then combined them to develop a broad spectrum of reasonable alternatives aimed at improving mobility within the study area. Various combinations of east-west and north-south mobility improvement options, including transit options, were developed into the initial alternatives. Notably, for reasons discussed in more detail below, the project team was unable to develop at this initial stage (or any other stage of the process) any feasible and prudent alternative that would meet the purpose and need and still avoid all Section 4(f) resources. Given the nature of the mobility problems in the study area and the resulting need to make significant improvements to east-west-running transportation facilities, and the existence of several Section 4(f) resources running north/south through the full study area and scattered along all of the existing east/west corridors, it was concluded early in the process that there was no feasible and prudent alternative that would avoid all 4(f) resources and still meet the purpose and need. As a result, after this initial phase the process of formulating alternatives was for Section 4(f) purposes essentially an exercise in developing and comparing alternatives that would meet the purpose and need and that might result in less net harm to Section 4(f) resources, based on subsequent application of a more detailed Section 4(f) analysis. This

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	<p>included alternatives that would avoid the Section 4(f) resource at the Jordan River Parkway at 11400 South.</p> <p>The initial phase of screening resulted in the assembly of seventeen alternatives that were then screened through a Tier 1 screening analysis, based on UDOT design criteria, to determine which ones to carry forward as preliminary alternatives for detailed traffic analysis. Twelve alternatives were carried forward from the Tier 1 screening. These preliminary alternatives then went through the Tier 2 screening process resulting in five refined alternatives that were analyzed in detail in the FEIS. Alternatives eliminated in the Tier 2 screening included those that did not meet the project purpose and need for improving mobility, and those that would result in excessive relocations. These excessive relocations would also be expected to result in additional impacts to Section 4(f) properties and much higher project costs. No alternatives were eliminated solely on the basis of excessive cost or incompatibility with local land use plans, although these factors, in combination with the excessive relocations, resulted in several alternatives being excluded from further detailed consideration. After a comparison of the refined alternatives, a Preferred Alternative was identified.</p> <p>It should be noted that alternatives cited by the 10th Circuit in <u>Davis v. Mineta</u>, 10600 South and 12300 South, were explicitly evaluated in this FEIS.</p>
<p>In contrast to what was accomplished in this document, NEPA requires an agency to consider enough alternatives to permit a reasoned choice. <i>Southern Utah Wilderness Alliance v. Dabney</i>, 7 F.Supp. 2d 1205, 1213 (D. Utah 1998), <i>citing California v. Block</i>, 690 F.2d 753, 767 (9th Cir.1982); <i>City of Aurora v. Hunt</i>, 749 F.2d 1457 (10th Cir. 1984). Agencies must “rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.” <i>Utahns for Better Transportation v. United States Department of Transportation</i>, 305 F.3d 1152, 1166 (10th Cir. 2002), <i>citing</i> 40 C.F.R. §1502.14(a). This was not done here.</p> <p>In addition, the Secretary must consider all “prudent and feasible” alternatives under Section 4(f). <i>Davis</i>, 302 F.3d 1120. Of course, if 4(f) properties are encountered, a stricter alternatives review standard applies. Pointedly, Section 4(f) requires the problems encountered by</p>	<p>17. As noted in comment response #16, a broad array of alternatives were considered in this FEIS. The reasons alternatives were eliminated from further analysis are included in Section 2 of the document and include not meeting UDOT design standards and not improving mobility over the No Build Alternative (therefore they did not meet the project purpose and need). Three alternatives were eliminated because they were essentially variations of alternatives retained, but had more impacts than the retained alternative. Two of these were Alternatives 3B and 3C, which had significantly higher relocations, Section 4(f), and cost impacts than Alternative 3A, but similar mobility improvements. The third was Alternative 5, which was a variation of Alternative 4 suggested by one city's mayor, that included an angled crossing of the Jordan River at either 11400 South or 11800 South, but would have resulted in over 100 additional relocations, yet similar impacts to Section 4(f) resources and similar mobility improvements.</p>

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<p>proposed alternatives to be truly unusual or to reach extraordinary magnitudes if parkland is taken. <i>Id.</i> While an alternative that does not solve existing or future traffic problems may be properly rejected as imprudent, potentially feasible and prudent alternatives may not be summarily dismissed by vaguely stating in a conclusory fashion that they do not further the purpose and need of the project. This is especially true when the purpose and need of the project is as vague and contradictory as it is here.</p> <p>The goal is to ensure that the agency gathers information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned. <i>Greater Yellowstone Coalition v. Flowers</i>, 359 F.3d 1257 (10th Cir. 2004)(internal citations omitted). A potential conflict with local or federal law, or in this case local planning, does not necessarily render an alternative unreasonable, although such conflicts must be considered. CEQ 40 FAQs, q. 2b; 40 C.F.R. 15.06.2(d). In addition, the reasonableness standard applies not only to the alternatives the agency discusses but also to the extent to which it must discuss them. <i>Utahns for Better Transportation</i>, 305 F.3d at 1166.</p>	
<p>Contrary to a proper NEPA alternatives analysis, it is apparent in this document that alternatives were inserted simply so they could be discarded. For instance, interchanges at 11600 South and 11800 South were eliminated because they were too close to existing interchanges under the AASHTO standards, yet 11400 South is also too close to 10600 and 12300 under those same standards. The same weaving and other problems that would arise if the 11800 South and/or 11600 South interchanges were constructed will create enormous safety problems should an interchange be constructed at 11400 South, yet nowhere in the document are these safety impacts discussed or reviewed. Despite the clear bias evident in the document toward having this interchange, it simply is not needed and it clearly does not fit within the existing interchanges.</p>	<p>18. As discussed in Section 2.2.1 of the FEIS, the freeway interchange options at 11600 South (0.5 miles from the existing interchange at 10600 South) and 11800 South (0.7 miles from the existing interchange at 12300 South) were eliminated because they did not meet the AASHTO recommended 1 mile minimum distance between freeway interchanges in urban areas. Although there are some exceptions, an interchange spacing of less than one mile is not recommended in most cases and spacing less than 0.75 miles is strongly discouraged. The tight spacing would result in short weave distances, which would reduce freedom of movement and induce lower speeds, resulting in reduced level of service on the freeway and a greater potential for accidents. The 11400 South interchange option meets the one mile spacing requirement between interchanges. In addition, the proposed addition of auxiliary lanes between the existing 10600 South and 12300 South interchanges further improves weaving distances under the Preferred Alternative.</p>
<p>In a further attempt to bolster the selection of the preferred alternative, one aspect of the need was based on East/West travel to and from I-15. However, the document reveals that much of this East/West need is created by people searching for I-15, to then go North or South. It is</p>	<p>19. As stated previously, the traffic analysis conducted for the FEIS shows that without the proposed action, there will be mobility problems within the study area even after the other planned roadway and transit projects identified on the WRFC 2030 LRP, such as the MVC and the</p>

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<p>clear that the expansion of Bangerter Highway and the Mountain View Corridor will more than meet that need. In addition, the planned light rail to South Jordan and the study area will assist greatly in meeting this North/South need, yet it is not fully or fairly analyzed anywhere in the document. The document suggests light rail will increase 300 percent, but does not detail how that fits into the people movement mix or how it will assist the resolution of any movement problems that may exist.</p>	<p>Mid-Jordan and Draper extension light rail projects have been completed. An alternative very similar to the one the commenter suggests, Alternative 3B, which includes expanding MVC to ten lanes and making Bangerter Highway a freeway facility, was analyzed (Section 2.2.2, page 2-14 through 2-15, FEIS). Alternative 3B did result in two additional improved intersections over the Preferred Alternative, but also resulted in many more relocations than the Preferred Alternative. As stated in Section 2.3.3 of the FEIS, an estimated 500 or more residential and business relocations would result from widening Bangerter Highway alone. Because of the excessive relocations, Alternative 3B was eliminated from further analysis.</p>
<p>A better approach would have been to focus on simply improving mobility and accessibility on either side of the Jordan River by expanding existing roads, without the 11400 South crossing, the interchange, or the 5-lane highway. No alternatives or combinations of alternatives were presented in this regard and they are clearly reasonable, feasible and prudent. As the Tenth Circuit warned, the failure to analyze a mass transit alternative is a particularly egregious shortfall of such a document, if it fails to completely analyze “cumulative alternatives” or the pairing of mass transit together and/or in conjunction with alternative road expansion as one of the means of meeting the projects goals. <i>Davis</i>, 302 F.3d at 1122. Other paired or mixed alternatives should have been carried forward for in-depth review as well and they were not, despite the Tenth Circuit’s admonition.</p>	<p>20. Seven of the twelve preliminary alternatives did not include a river crossing at 11400 South and of those seven, four did not include a new interchange. Only three of those seven alternatives (3A, 3B, and 3C) improved mobility over the No Build Alternative.</p> <p>One alternative analyzed was a mass transit only alternative, but it did not improve mobility over the No Build Alternative and was eliminated. However, significant mass transit improvements included in the WFRC LRP were included in <u>all</u> the preliminary alternatives. These include Draper and Mid Jordan light rail extensions, commuter rail from Utah County to Weber County, Bus Rapid Transit (BRT) along Redwood Road and MVC, new and increased bus service within the study area, and new park-and-ride lots within the study area. In addition, Transportation Management (TM) systems (such as facilities to accommodate other modes of transportation including bus pull-outs, sidewalks, and bicycle paths) and improvements to increase safety at railroad crossings were incorporated to the extent practicable into <u>all</u> alternatives considered. By considering a mass transit only alternative, and by including significant mass transit improvements and TM systems in all of the action alternatives, in combination with various other transportation improvements that would improve mobility in the study area, the FEIS alternatives process was specifically designed to address the court’s concerns in <u>Davis v. Mineta</u> regarding “cumulative” and mass transit alternatives.</p>
<p>Additional flaws are found in the elimination of alternatives section of the document. The agencies must have been aware that this was going to be a 4(f) project from the beginning. That being the case, legitimate alternatives may not simply be eliminated because of excessive</p>	<p>21. As noted in response 16, it was determined early in the process that no reasonable and prudent alternatives could be identified that would avoid all Section 4(f) resources and still meet the project purpose and need, so the primary Section 4(f) consideration became alternatives with</p>

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<p>relocations, strong public opposition or cost. A careful review of the document also reveals that some alternatives were impermissibly eliminated simply for “mobility reasons” that are suspect in their factual basis.</p>	<p>different and potentially lesser 4(f) impacts. In addition, no alternatives were eliminated solely based on excessive relocations, strong public opposition, or cost, though these may have been contributing factors in the elimination of some alternatives. Alternatives 3B and 3C were eliminated because they did not improve mobility substantially if at all over the similar Alternative 3A, yet they cost three to seven times more, and resulted in hundreds more relocations and numerous potential additional 4(f) impacts. Alternative 5 was eliminated because it was essentially similar to Alternative 4, but with an angled river crossing. This alternative had similar mobility improvements, 4(f) impacts, and environmental impacts as Alternative 4, yet was inconsistent with local planning and would result in 100 more relocations (it went through a developed residential neighborhood) and consequently had strong local and city council opposition.</p> <p>Four alternatives (Alternatives 2, 6, 8, and 9) were eliminated because they did not improve mobility over the No Build Alternative. This conclusion was based on the WFRC 2030 long range transportation demand model. Alternatives that do not meet purpose and need are neither reasonable for purposes of NEPA nor prudent and feasible for purposes of Section 4(f).</p>
<p>As stated above, the substantive requirements of Section 4(f) analysis are more specific and more rigorous than those of NEPA. Prudent and feasible alternatives must be studied, unless they do not conform to the project purpose and need, or pose problems that are unique, or reach extraordinary magnitudes. <i>Davis</i>, 302 F.3d 1120. There is simply no support in the document for rejecting otherwise feasible and prudent alternatives based on conclusory statements that relocations, public opposition, costs or mobility problems are of extraordinary magnitudes or of an unusual character. <i>Coalition on Sensible Transportation v. Dole</i>, 642 F. Supp. 573 (D.C. Cir. 1986).</p>	<p>22. No prudent and feasible alternatives with less Section 4(f) impacts than the Preferred Alternative were eliminated from analysis. No prudent and feasible alternatives that would avoid Section 4(f) impacts could be identified.</p>
<p>In addition, there is no evidence to support the proposition that the other impermissibly eliminated alternatives will not satisfy the purpose and need of the project, considering the fact that the Bangerter Highway and Mountain View Corridor expansions may eliminate most of the traffic concerns supposedly justifying the “need” for the project. Without such analysis of these projects in a regional setting, there is no justification for rejecting the no-build and other alternatives as not feasible and prudent under Section 4(f). <i>See Stop H-3 Association v. Dole</i>, 740 F.2d</p>	<p>23. Alternatives 3B and 9 included expanding both MVC and Bangerter Highway. Alternative 9 did not improve study area mobility over the No Build Alternative and so did not meet the project purpose and need and was eliminated. Alternative 3C resulted in the greatest mobility improvements, but resulted in the most impacts as well. Although the alignment for the MVC has not yet been established, the widening could result in several hundred additional relocations. And it is estimated that there would be over 500 residential and business relocations required to</p>

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<p>1442 (9th Cir. 1984). Due to the approach selected, the 4(f) analysis was not applied to all feasible and prudent alternatives as required by law, because some of those alternatives were prematurely eliminated by the screening analysis based on an unacceptable alternatives analysis under NEPA and 4(f).</p>	<p>widen Bangerter Highway to a six-lane freeway facility. Although a cultural resource inventory has not been conducted for the entire Bangerter Highway, it can be reasonably assumed that many additional Section 4(f) properties would be impacted by this expansion than by the similar Alternative 3A, which was retained for detailed analysis.</p>
<p>When the document finally explains the actual development the preferred alternative will facilitate in specific terms, it turns out that it only exists at Redwood Road and 11400 South and at I-15 at 11400 South. Development of both of those areas is already in process or will happen. There is simply no question that development will continue between Lone Peak Parkway/Jordan Gateway and State Street along the I-15 Corridor. You do not need an interchange to facilitate that development. In fact, the land that would be occupied by the interchange may be used for development, if the interchange is not constructed, so avoidance of the preferred alternative will actually enhance the very development the document seeks to facilitate.</p>	<p>24. As identified in numerous places in the FEIS, development within the study area is occurring and will continue to occur, with or without the planned roadway improvements. Photographs G, H, and others, in Attachment B, show how this development is currently occurring. What is expected to be different, under the different alternatives considered, is the type of development (regional versus neighborhood scale) that will occur and the associated revenue those businesses will generate and the overall mobility within the area. As described in Section 4.4.2 of the FEIS, the Preferred Alternative is expected to have the greatest positive impact over any of the Build Alternatives or the No Build Alternative on annual sales tax revenue and regional retail development space. This conclusion is based on a detailed study prepared by experts in the field of economic development and planning with significant input from the economic development departments of the relevant communities. The study is included as Appendix F of the DEIS, which was incorporated by reference in the FEIS.</p> <p>It should also be noted that some of the development that is projected to occur under the Preferred Alternative is already taking place in apparent anticipation of the selection and implementation of that alternative. It is not unusual for developers to take calculated risks based on the inclusion of highway improvement projects in local and regional plans, and particularly when such a project is identified as the Preferred Alternative in a FEIS. This appears to be the case with regard to some of the current development taking place along the 11400 South corridor. See "Cities Dream of Development", Salt Lake Tribune, July 29, 2005, (http://www.sltrib.com/utah/ci_2898024) (documenting "big box" and "mid-box" development already occurring in anticipation of potential 11400 South interchange). Whether these businesses will succeed, and whether they will generate the amount of tax revenue projected in the FEIS, can be expected to differ depending on whether the Preferred Alternative is implemented.</p>
<p>It also appears that the planned widening of Redwood Road will deal</p>	<p>25. Based on the economic analysis presented in the FEIS, there is</p>

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<p>with the intended development at the intersection of 11400 South and Redwood Road. After all, that area is less than a mile from 10400/10600 South and from 12300/12600 South and has nearly the entire population of South Jordan to support it.</p>	<p>sufficient population at the present time to warrant an additional neighborhood scale retail development at 11400 South and Redwood Road if access to that potential development were to be improved with the addition of a river crossing, as would occur under Alternatives 1, 4, and 7.</p>
<p>That said, it is also completely obvious that some form of development will be created by the selection of the preferred alternative. Unfortunately, it is nothing like the development that is discussed in the FEIS. The sort of development that accompanies 5-lane, high traffic highway is “big boxes”, strip malls, and the conversion of residential neighborhoods to a cultural desert. This is the sort of discussion the Tenth Circuit of Appeals found conspicuously missing in <i>Davis</i>, yet nowhere are these issues fully embraced, arrayed and dealt with. Interestingly, pages 3-14 through 3-15 reveal that planned major retail locations do not even exist in the heart of the 11400 South area, save on Redwood Road. It is clear that the focus for planned development is on the I-15 area, Bangerter Highway and Redwood Road. Two fatal flaws exist in this regard. The first is the use of development located on the fringes of the study area to justify a large road down its middle. The second is the failure to discuss the growth that will actually occur, or that will be induced by that road and the impacts that road will create on the residential community of South Jordan.</p>	<p>26. Existing and planned land use and growth was documented clearly and extensively in the FEIS, and was based on review of city master plans and conversations with city planners, and economic development directors. The 11400 South corridor is included as a planned 5-lane arterial in both Draper City’s and South Jordan City’s master transportation plans. Anticipated growth and associated impacts are discussed extensively in Sections 4.1, 4.3, 4.6, 4.7, 4.8, 4.9, 4.10, and 4.11. As mentioned in comment response #24, developers are currently developing areas designated appropriately in cities’ land use and master plans. Traffic improvements associated with the Preferred Alternative have been shown to provide the necessary infrastructure to support the ongoing economic development. As shown in photographs G, H, and others in Attachment B, development has and is occurring in the developable area. This growth has a negative affect on mobility and drives the need for traffic improvements to improve mobility.</p> <p>The FEIS (Section 4.4.2) discusses the type of retail development that would occur under each of the Build Alternatives. The document states clearly that Alternative 4 will result in the greatest amount of <u>regional</u> retail square footage development, such as the “big boxes” you refer to. No major regional retail development is expected to occur within the residential areas of 11400 South, though some additional neighborhood scale retail development is expected under the Preferred Alternative in the area of 11400 South and Redwood Road.</p> <p>Regardless of the type of development that will occur under any of the Build Alternatives, there will still be a need to improve mobility within the study area.</p>
<p>There are also combinations of alternatives and other alternatives that are reasonable, feasible and prudent and, yet were excluded. The alternatives that were dismissed because of excessive relocation, strong public opposition, lack of mobility and cost should have been advanced due to the stricter scrutiny required in a 4(f) context. In addition, other transportation improvements could have been included or combined. Of course, the problematic nature of the purpose and need in the document</p>	<p>27. As discussed previously, numerous combinations of options and alternatives were evaluated, in part to ensure that the court’s concerns in <i>Davis v. Mineta</i> were fully addressed. No reasonable, prudent and feasible alternatives that avoided Section 4(f) resources or that had less Section 4(f) impacts than the Preferred Alternative were eliminated from consideration.</p>

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<p>makes formulation and selection of alternatives difficult and the entire effort was doomed from the start due to those flaws. However, the <i>Davis</i> Court made clear that the document must consider “cumulative alternatives” in this case to avoid NEPA violations. 302 F. 3d at 1122 (No effort was taken to analyze cumulative alternatives and this was an “egregious shortfall” of the EA).</p>	<p>As stated above, significant mass transit improvements included in the WFRM LRP were included in <u>all</u> the preliminary alternatives. In addition, Transportation Management systems and improvements to increase safety at railroad crossings were incorporated to the extent practicable into <u>all</u> alternatives considered.</p>
<p>For instance, widening 11400 South from State Street to Lone Peak Parkway/Jordan Gateway, perhaps in conjunction with proposed connections on 11600 South and 11800 South using an underpass and overpass would meet the needs in that area. Changes to the 10600 South and 12300 South interchanges could be undertaken, which would avoid the weaving problem that will be created if an interchange is emplaced at 11400 South. It may be that removal of the intersection at 10600 South and approximately 50 West will solve many of the problems at that interchange. The above improvements, together with those already contemplated for the area (pages 2-5 and 2-6) will satisfy any needs that may exist.</p>	<p>28. It should be noted that at no time during the scoping or EIS preparation process did the commenter forward for potential detailed study the alternatives that are described in this and the following comment. In addition, because the commenter’s descriptions refer to various unspecified “improvements,” it cannot be determined with certainty what these suggested alternatives actually consist of. To the extent that they can be discerned, however, these alternatives would not be reasonable, prudent or feasible for the following reasons.</p> <p>The alternative first described is similar to but includes fewer components than Alternative 3A, which was analyzed in detail in the FEIS. Alternative 3A was not as effective as the Preferred Alternative in improving mobility within the study area. Since the commenter’s first alternative does not include as many traffic improvements as alternative 3A, which was fully analyzed and found not as effective as the Preferred Alternative, it is reasonable to expect the commenter’s alternative to not be as effective as the Preferred Alternative. It is notable that the commenter’s alternative would not avoid Section 4(f) resources (Figure 5-6 of the FEIS identifies Section 4(f) resources in the study area), nor does it meet purpose and need to the degree that the Preferred Alternative does.</p>
<p>Also, a combination of alternatives including improvements to 9000 South, 9800 South, 10600 South, Bangerter Highway and the Mountain View Corridor, coupled with the contemplated improvements referenced above, including Mass Transit, will solve the East/West and North/South issues. Then, mobility needs within the area between 10600 South and 12300 South could be met by the contemplated expansions of 1300 West, Redwood Road, 2700 West, 700 West and perhaps the addition of another lane to 11400 South. Not only would the purpose and need be met, but there would be far less impact on 4(f) properties and less environmental damage.</p>	<p>29. Most of the roadway improvements suggested here are already included in the WFRM LRP and so were included in the 2030 traffic projections used to assemble, screen and compare the FEIS Build Alternatives. These include improvements to 10400/10600 South, MVC, 9000 South, 9800 South, and Redwood Road and mass transit improvements. Figure 4-10 of the FEIS shows cumulative impacts associated with all projects of the study area and includes identified historic resources and parks, which are section 4(f) resources. The commenter’s alternative of adding additional lanes to 1300 West, Redwood Road, 2700 West, and 700 West, and 11400 South, in addition to improvements on the LRP, which were studied as part of this FEIS, would result in far greater impacts to section 4(f) resources than</p>

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	the Preferred Alternative.
<p><u>4. Environmental Impacts.</u> This entire section demonstrates the bias of the document toward the preferred alternative. As to impacts, factual inconsistencies abound and when the impacts are actually arrayed, they are set forth in a quantitative rather than a qualitative manner. This approach is impermissibly utilized in the review of impacts to, among others, recreation resources, noise, water and 4(f) properties.</p>	<p>30. The environmental impacts of each of the four Build Alternatives and the No Build Alternative were evaluated equally, in detail, in both a quantitative and/or qualitative manner as appropriate. For instance, expected types and acres of land use changes were discussed, quantities of additional stormwater runoff and impacts to in-stream water quality were identified, and value and quantities of wildlife habitats impacted were presented. The discussion presented in Section 5.4 and Tables 5-4, 5-5, and 5-7 clearly present both quantitative and qualitative impacts to Section 4(f) resources.</p>
<p>This conclusion is adequately supported by the document itself. For instance, it is freely admitted and documented that many negative social impacts will be created by the preferred alternative, yet that alternative was selected over other alternatives that create no such impacts, or which create some impacts in areas that are already so impacted. One must ask the question that if part of the purpose and need was to preserve the quality of life in South Jordan, then how may there be this many negative impacts upon social resources? Also, it must be noted that in nearly all cases, on all issues, alternative 3A is equivalent to or creates less impacts than alternative 4, yet alternative 4 prevailed. Of course other reasonable, prudent and feasible alternatives were never sufficiently articulated, preserved or studied.</p>	<p>31. Selection of the Preferred Alternative was based on a comparison of all the alternatives advanced for detailed study in terms of mobility improvements, and environmental, social, and economic impacts. In addition, the project team considered public and resource agency input and city council recommendations or resolutions regarding the project. The No Build Alternative was also considered and analyzed, as required by NEPA, but it did not meet the project purpose and need for improving mobility and providing the transportation infrastructure to support economic development within the study area through the year 2030. Therefore, it was not recommended as the Preferred Alternative.</p> <p>Based on the comparative analysis of the Build Alternatives, Alternative 4 was recommended as the Preferred Alternative in the EIS. Alternative 4 offers the greatest mobility improvements and economic benefits within the study area. The Section 4(f) evaluation conducted for the EIS concluded that there is no feasible and prudent alternative that will avoid all Section 4(f) resources. All four of the Build Alternatives will directly use both recreational and historic Section 4(f) properties. After application of all possible planning to minimize harm, Alternatives 4 and 7 affect the least number of 4(f) recreational facilities and Alternative 3A affects the least number of 4(f) historic resources. Based on a qualitative and quantitative assessment of Section 4(f) resources and impacts, Alternative 4 will have the least overall net harm to Section 4(f) resources in the study area.</p>
<p>The entire growth issue, both induced and otherwise, is not adequately dealt with in the FEIS. The document claims that the preferred alternative is consistent with the City's land use plans, but a 5-lane roadway through the center of this residentially oriented and zoned City is not. In addition, there is no question that growth and growth changes</p>	<p>32. Existing and planned land use and growth was documented clearly and extensively in the FEIS, and was based on review of city master plans and conversations with city planners, and economic development directors. The 11400 South corridor is included as a planned 5-lane arterial in both Draper City's and South Jordan City's master</p>

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<p>will be induced by this highway and those impacts are not adequately detailed in the document.</p>	<p>transportation plans. Anticipated growth and associated impacts are discussed extensively in Sections 4.1, 4.3, 4.6, 4.7, 4.8, 4.9, 4.10, and 4.11. As mentioned in comment response #24, developers are currently developing in areas designated appropriately in cities' land use and master plans. Traffic improvements associated with the Preferred Alternative have been shown to provide the necessary infrastructure to support the ongoing economic development. As shown in photographs G, H, and others in Attachment B, development has and is occurring in the developable area. This development is affecting mobility and necessitates traffic improvements to improve mobility.</p> <p>It should be noted that much of the undeveloped land in the study area is located within the Jordan River floodplain and is not undergoing development and indeed is restricted from any development by the cities and or state agencies who own and administer those lands (see Section 3.1 and Figures 3-1C, 3-5, and 4-10).</p>
<p>For instance, both the no-build alternative and alternative 3A are criticized because the 1-15/11400 South and neighborhood retail development at 11400 South and Redwood Road supposedly will not be facilitated thereby. However, that growth is happening now and will continue in the future. Moreover, if the development of Redwood Road and 11400 South is intended to be neighborhood retail development, how is neighborhood retail development facilitated by cutting a 5-lane swath through that very area? Likewise, the statement that no interchange at 11400 South and I-15 will somehow inhibit retail regional development on 137 acres is equally ridiculous. Just look at what is happening there now.</p>	<p>33. As stated previously (see comment responses #24, 26, and 32) development within the study area is occurring and will continue to occur, based on existing land use plans and zoning. What is expected to be different under the various Build Alternatives is the type of development (regional versus neighborhood scale) that will occur and the associated revenue those businesses will generate. Section 4.4.2 of the FEIS indicates that the Preferred Alternative will have the greatest positive impact over any of the Build Alternatives or the No Build Alternative on annual sales tax revenue and regional retail development space.</p> <p>It is true that regional retail development is presently occurring. While it is unknown how much development is in anticipation of the improvements included in the Preferred Alternative, recent reports in the Salt Lake Tribune indicate that a substantial amount of the new development is anticipating the improvements ("Cities Dream of Development", Salt Lake Tribune, July 29, 2005, http://www.sltrib.com/utah/ci_2898024). Whether these businesses will succeed, and whether they will generate the amount of tax revenue projected in the FEIS, can be expected to differ depending on whether the Preferred Alternative is implemented.</p>
<p>Interestingly, the document admits at page 4-5 that ongoing and planned residential development in the study area already has adequate access. If the neighborhood retail development at 11400 South and</p>	<p>34. The commenter is mixing discussions on residential development in the study area with specific neighborhood retail development as well as confusing "adequate access" with "adequate mobility". The fact that</p>

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<p>Redwood Road can be adequately facilitated by the expansion of Redwood Road, which it can and there are no issues regarding traffic flow for ongoing and planned residential development, then why do we “need” a widened 11400 South in this area. In fact, the residential growth is purported to be the same under the preferred alternative as it is under the no-build alternative. The document does not support the existence of any mobility need for this purpose and no such purpose will be served by the preferred alternative.</p>	<p>there is existing “access” to areas of planned residential development cannot be equated to a conclusion that there are “no issues regarding flow” to such development. “Access” and “flow” (mobility) are not interchangeable terms.</p> <p>The need for improvements to 11400 South to facilitate the planned neighborhood retail development at 11400 South and Redwood Road has been documented in the FEIS (Section 4.4.2) and discussed in response numbers 24, 25, 26, 32, and 33.</p> <p>The commenter’s second point regarding “traffic flow for ongoing and planned residential development” confuses access to residential development with mobility needs throughout the study area. <u>The FEIS clearly states that adequate access to current and planned residential developments exists; however, transportation infrastructure improvements are necessary to meet future mobility demands in the study area. The FEIS and its supporting documentation clearly illustrated that Alternative 4 best meets these mobility needs.</u></p>
<p>At pages 4-5 through 4-7 there is a limited discussion about the negative impacts from construction of the preferred alternative upon the neighborhood quality of life and cohesion with respect to increased traffic, expanded roadway impacts, and turnovers and transiency. By comparison, these impacts are admitted to be less pronounced on 12300 South and 10600 South, because they have already been so impacted. It is admitted that induced growth will include some commercial development and alteration of adjoining neighborhoods that are almost exclusively residential in character, but no detail is provided. These statements are not only conclusory and lacking in supporting detail, they are simply the tip of the iceberg with respect to the devastating development this road will actually induce.</p>	<p>35. Impacts to community quality/cohesion are discussed on pages 4-5 through 4-10 of the text and are based on, to a large extent, an extensive community social assessment performed for this FEIS. Mitigation measures to address these impacts are also presented. While it is correct that impacts to neighborhood cohesion would be less pronounced along 10600 South and 12300 South than along 11400 South, the document also notes that improvements to 11400 South were viewed as positive by many area residents due to the resulting reduced traffic congestion and improved east-west mobility.</p> <p>Details on the types and locations of growth anticipated from the Build Alternatives are discussed in Sections 4.1, 4.4.1, 4.4.2, and 4.4.4 of the FEIS.</p>
<p>The failure to adequately discuss phasing of the project was considered a major flaw in the 2000 EA/4(f) by the Tenth Circuit Court of Appeals. Despite an attempt to tackle this set of issues, the discussion is conclusory and insufficiently supported. There is some discussion of the impacts to the 700 West neighborhood, but there is nowhere near the level of detail required regarding the other impacts of phasing and the impacts to other areas. As in the EA, the study of phasing impacts are cursory and must be studied in detail under the ES. See 40 C.F.R. § 1508.8(b).</p>	<p>36. In order to address the 10th Circuit’s concerns in <u>Davis v. Mineta</u> regarding project phasing, a phasing analysis was conducted with the results discussed in section 4.3.5 of the DEIS. Based on comments received on the DEIS, the phasing discussion was further expanded in the FEIS. The resulting analysis considers the impacts of potential phased construction on mobility along 11400 South, 700 West, and Lone Peak Parkway/Jordan Gateway. Supporting traffic analysis is documented in the Appendix A to the FEIS. The phasing analysis also addresses impacts on air quality, noise, safety, community cohesion,</p>

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	<p>and costs. These impacts are discussed in Section 4.3.5 of the FEIS. The agencies believe that the phasing analysis satisfies the concerns expressed in <u>Davis v. Mineta</u> and complies with NEPA. As an additional point, it should be noted that the WFRC LRP currently provides for both the interchange and the river crossing to be built during Phase 1 of the LRP, which covers the period of 2004-2012. Under this scenario, any of the identified impacts of project phasing should be of short duration.</p>
<p>As to recreational impacts, it is beyond comprehension that no indirect impacts will occur to these resources. There is insignificant detail as to all of the impacts that will occur with respect to Willow Creek Park and the Jordan River Parkway. Mere statements such as the bridge will diminish the quality of scenery, or that it will add a major manmade element to the viewscape are insufficient as a matter of law. Some effort to quantify and discuss these impacts must be made. The same is true regarding the impacts created by noise in both Willow Creek Park and the Jordan River Parkway. Noise will create significant impacts to both of these resources, but they are conspicuously missing from Table 4-12. There are many other problems with the noise analysis as well.</p>	<p>37. In the absence of the commenter specifying what indirect impacts are thought to be missing, it is difficult to respond to this comment. The direct impacts identified for the different Build Alternatives vary and include conversion of some parkland to transportation use, increased noise levels, visual impacts, and safety impacts, as well as improved access to some recreational facilities. It is difficult to quantify visual impacts. The FEIS explains that the new bridge and road crossing of the Jordan River at 11400 South would add an additional man-made element to the viewshed of trail users and would diminish the quality of the scenery, while noting that the view already contains numerous man-made elements. Visual impacts to the Jordan River Parkway created by the new river crossing are shown also as a visual simulation on Page 4-100 of the FEIS. In regard to indirect visual impacts, it should again be noted that much of the floodplain area of the Jordan River is restricted from further development (see comment response #32). The immediately surrounding area, however, is largely urbanized and is experiencing development irrespective of the Preferred Alternative, much of which is visible to those using the Jordan River Parkway trail. The photographs in Attachment B (photos A, B, C, D, E, F, I, J, K, L, and M) depict the type and intensity of some of that development as viewed from several points along the Jordan River corridor.</p> <p>Table 4-12 documents increased noise levels at dwellings only and thus is not surprising that noise impacts to parks are not listed there. Noise impacts to trail users from the new Jordan River crossing are discussed in Sections 4.5, 4.7, and 5.4.1. Table 5-3, "Jordan River Parkway/Trail Noise Levels by Alternative," compares the decibel levels at the new river crossing under the various alternatives and indicates that noise levels there would be lower than that currently experienced by trail users at the 10600 South river crossing. The Division of Parks and Recreation concluded that noise at the 11400 South crossing would not significantly impact the trail or Parkway or affect the amount or nature of leisure use (FEIS Appendix D, September 29, 2004 letter from Division of Parks</p>

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	<p>and Recreation to UDOT.)</p> <p>Willow Creek Park is a planned linear trail that would cross 11400 South in an area where the existing road would be widened at approximately 540 West in Draper (Section 4.5.2, FEIS). Planning for the park was conducted jointly with UDOT, in anticipation of the possible widening of 11400 South. UDOT deeded 3.86 acres to Draper City with the understanding that a detention basin would be constructed on the land to hold runoff water and groundwater associated with any possible improvements to 11400 South. Draper City agreed that part of the property would be deeded back to UDOT if 11400 South were widened (FEIS Appendix D, March 5, 2004 letter from Draper City). The remainder of the property, along with additional adjacent property acquired by Draper, is planned as a linear parkway with a non-motorized trail. Funding for the trail is not included in the City's 5-year capital improvement plan and thus it is likely that the trail will not be constructed until after the road is widened (FEIS Appendix D, September 8, 2004 letter from Draper City to UDOT). Once the trail is constructed, it is expected that trail users would experience noise levels similar to those experienced by users of the Jordan River Parkway trail (Figure 4e in Appendix H of the FEIS indicates that the noise receptors closest to Willow Creek will not reach 65 dBA, the Noise Abatement Criteria level for recreational areas). FEIS Appendix D, September 29, 2004 letter from Division of Parks and Recreation to UDOT indicates that these noise levels are not expected to result in diminished trail use.</p>
<p>The same flaws exist with respect to water resources. For instance, at 4-63, storm drainage is discussed, but there is no discussion of the impacts of importing a large portion of Sandy City's stormwater to retention ponds and then into Willow Creek. This is the case despite the fact that the document reveals at page 4-65 that there will be a direct drainage of up to 5 cfs of these significantly polluted stormwaters to Willow Creek, which is a tiny waterbody. This same cavalier treatment is accorded to wetlands, wildlife habitats, visual impacts and cumulative impacts. Details are conspicuously lacking as to actual impacts and it is not apparent that any effort was undertaken to understand the impacts that might occur. There is insufficient detail and where impacts are actually admitted, they are downplayed. As to the wetlands, it is clear that the least environmentally damaging practicable alternative was not selected. Once again, the pronouncements of the Tenth Circuit Court of Appeals in <i>Davis</i> and otherwise have been ignored.</p>	<p>38. Section 4.8.1 of the FEIS (pages 4-58 through 4-61) identifies the impacts from each Build Alternative on water quality within all potential receiving streams, including Willow Creek. The water pollutant analysis performed by the Utah Division of Water Quality for the worst case scenario (Alternative 1 with undetained drainage) resulted in pollutant levels below levels that would present a water quality concern for the receiving water bodies (Table 4-17). The pages to which the commenter refers discuss how stormwater flow into Willow Creek (and other receiving streams) will be managed for each alternative. The stormwater drainage design takes into account the calculated water pollutant concentration as well as the flow rates associated with the 10-year 1-hour storm event. As stated in the UDOT Manual of Instruction for Roadway Drainage (Jan. 2004), discharges greater than 5 cfs require separate permitting actions through the Utah Division of Water Quality, which would require detention. Discharges less than 5 cfs do not require</p>

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	<p>separate permitting or detention. The discharge from 700 West to 600 West, as indicated in Table 4-19 on page 4-65, uses language consistent with the UDOT Manual of Instruction language: “Flow will be less than 5 cfs.” The flow will likely be significantly less than 5 cfs for such a small stretch of roadway.</p> <p>With regard to the comment that the FEIS does not discuss the impacts of “importing a large portion of Sandy City’s stormwater to retention ponds and then into Willow Creek”, two responses are required. First, stormwater from the area of Sandy that lies east of I-15 is not “imported” into Willow Creek. Each city’s storm drainage system and storm drainage master plan, including Sandy’s, has been developed to be consistent with the natural drainage in the area, which is that all water flows towards and eventually into the Jordan River, either directly or by way of a Jordan River tributary. In areas where a Jordan River tributary lies between a drainage area and the Jordan River, stormwater is generally routed into the tributary, as would be the case with natural overland flow. Consistent with that approach, stormwater runoff from the area of Sandy that lies east of I-15 in the proximity of 11400 South currently drains to the west, towards and into Willow Creek, which runs south-to-north through this area before draining into the Jordan River (FEIS Figure 3-5). This stormwater flows into a small detention basin east of I-15, and then west along 11400 South through a pipe and then an open ditch from which it discharges to Willow Creek without any further detention (FEIS pg. 3-33). Under the Preferred Alternative the existing detention basin will be enlarged, the existing pipe and ditch will be replaced with a larger pipe, and a new detention basin will be added at the end of the pipe, just before the stormwater discharges into Willow Creek, to improve the existing system and to handle the increased flows that will occur due to the addition of paved area from the transportation improvements under the Preferred Alternative (FEIS Figures 2-19d and 2-19e and Table 4-19). Second, the impacts of the stormwater flow into Willow Creek from this discharge point are addressed. Section 4.8.1 of the FEIS contains a discussion of direct impacts and concludes that even during peak storm events, concentrations of metals, TDS, TSS and BOD-5 in Willow Creek are expected to stay within water quality standards and existing beneficial uses would be protected (FEIS pages 4-60 to 4-61). The FEIS, at Section 4.8.1.2, contains a discussion of indirect impacts and concludes, based on conservative modeling and assuming that no additional stormwater detention facilities would be installed, that runoff from commercial development could cause slight</p>
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	<p>elevations over water quality standards in Willow Creek during peak events, but that the required detention facilities would lower those concentrations to acceptable levels (FEIS at 4-63).</p> <p>Impacts to wetlands, wildlife habitat, and cumulative impacts are discussed both quantitatively and qualitatively. Visual impacts are discussed qualitatively and discussed in comment response #37.</p> <p>As to wetlands, the Army Corps of Engineers has indicated that, based on the minimal anticipated adverse affects to jurisdictional wetlands and other waters associated with any of the Build Alternatives, and the ability to fully mitigate any such affects, it is expected that each alternative would be permitted pursuant to one or more Nationwide Section 404 Permits. For projects permitted under Nationwide permits, a project-specific practicable alternatives analysis is not required because the Section 404(b)(1) analysis is done in connection with the adoption of the Nationwide permit itself (see 33 CFR 330.5(b)(3) and 40 CFR 230.7).</p>
<p>5. <u>Section 4(f)</u>. As previously mentioned, the manner in which reasonable alternatives were eliminated does not meet the level of scrutiny required under operative law. The preferred alternative and alternative 3A are fairly close in this regard, but since a quantitative rather than a qualitative review of the resources themselves is all that is provided, one is left with the conclusion that the preferred alternative is equivalent to alternative 3A. That is simply not the case. A careful review of the document, despite its many failings, reveals that the 4(f) resources affected by alternative 3A are actually minimal in comparison to the preferred alternative.</p>	<p>39. The Section 4(f) analysis was conducted in accordance with FHWA regulations and guidance, including the recently updated Section 4(f) policy paper. See “Section 4(f) Policy Paper, Office of Planning, Environment and Realty Project Development and Environmental Review” (March 1, 2005). Consistent with the regulations and guidance, both a quantitative and a qualitative review of the Section 4(f) resources within the project study area and the impacts to those resources were provided in the FEIS/Section 4(f) analysis. The FEIS, in Section 4.11.2, presents the number of historic properties and the State Historic Preservation Officer's rating on each historic property and notes the properties identified as locally significant by the study area cities. The document also identifies the number of Section 4(f) impacts and exactly what those impacts are in Sections 5.8.1 through 5.8.4. The overall comparison of Section 4(f) uses presented in Section 5.8.5 summarizes the impacts to Section 4(f) resources from each alternative and concludes that Alternative 4 has the least overall net harm to Section 4(f) resources.</p>
<p>In contrast, the preferred alternative affects an equestrian park, bisects and bridges one of the last bridge-free sections of the Jordan River Parkway with a 5-lane highway. That highway will create an increase of at least 15 decibels in the Jordan River Parkway and forever negatively alter the viewshed and change the recreational experience that is currently available. The road will create many of the same impacts on</p>	<p>40. In the absence of any prudent and feasible alternatives that would avoid the use of all Section 4(f) resources, an evaluation was conducted of the Build Alternatives to determine which would cause the least overall net harm to those resources, after the application of all possible planning to avoid and minimize harm for each alternative, and in consultation with the agencies with jurisdiction over the affected</p>

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<p>part of Willow Creek Park and will also cut in half the Fairbom Historic District and take out several of the historic properties in that District. There is simply no way alternative 4 may ever be legally approved if it is fairly and legally compared to the other feasible and prudent alternatives that exist.</p>	<p>resources. That evaluation is documented in the FEIS/Section 4(f) Evaluation at Sections 5.6 to 5.8, and its results are summarized in Table 5-7. See also Figures 5-8a through 5-8e for impacts to recreational resources and Figures 5-9a through 5-9l for impacts to historic resources. In sum, Alternatives 4 and 7 have the least net harm to recreational and wildlife Section 4(f) resources while Alternatives 3A, 4, and 7 are considered to have similar impacts to Section 4(f) historic resources. Although Alternatives 4 and 7 are similar in terms of 4(f) impacts, Alternative 4 has fewer strip takes from historic properties than Alternative 7 and therefore has been determined to have the least overall net harm. While the number of impacted properties is an important factor for comparison purposes, the relative significance of the impacts, to the extent it could be reasonably characterized and compared amongst recreational and historic resources, was also considered in making the assessment of least overall net harm. Although the historic resource impacts are considered similar amongst the Build Alternatives, Alternative 3A is recognized as having the least impact to this resource type. However, after full consideration of the quantitative and qualitative assessment of the impacts and avoidance and minimization measures for all resources, significant impacts to the recreational resources under Alternatives 1 and 3A tipped the balance in favor of selecting either Alternative 4 or 7 as the least overall net harm. Alternative 4 was selected over Alternative 7 due to fewer impacts to historic resources and because it better supports the purpose and need of the project. A detailed discussion of the qualitative values and additional factors used in the determination of least harm are provided herein for the commenter.</p> <p>Assessment of Harm to Section 4(f) Recreational and Wildlife Resources</p> <p>The two Section 4(f) uses that would occur under Alternatives 1 and 3A but not under Alternatives 4 and 7 include the direct and permanent use of approximately 0.3 acres and 0.1 acres of park property, respectively, at the Jordan River Rotary Park (Draper) and the Riverton City Skate Park, with proximity impacts to the existing and planned park amenities at both locations, and the long term (one year) temporary use of 6 acres of park property at the Galena Hills Community Park (Draper), with impacts to several planned park facilities. The entities with jurisdiction over these parks consider these impacts to be significant and</p>
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	<p>inconsistent with park plans.</p> <p>Alternatives 4 and 7 would include a crossing of the Jordan River Parkway trail, which is a Section 4(f) resource, but the agencies with jurisdiction over the trail do not consider the resulting impacts to be significant so long as the new bridge and trail are appropriately designed to accommodate the existing and proposed trails and to enable access from the east side of the river. All Build Alternatives would use 0.15 acres of the URMCC Migratory Bird Habitat Restoration Project.</p> <p>Assessment of Harm to Section 4(f) Historic Properties</p> <p><i>191 West 12300 South</i> This historic residence was built in 1954 and has no discernable style (Attachment C: Photograph A). The house has been converted to a machine shop and has been re-sided since its original construction. There are no contributing outbuildings located on the property. Alternatives 1 and 3A will require a complete parcel take from this property resulting in an Adverse Effect under Section 106 of the NHPA.</p> <p><i>736 West 12300 South</i> This historic house is a post-war residence built in 1950 (Attachment C: Photograph B). The structure appears to be a gambrel-roofed barn that was converted to a residence. Although the exterior has had no major alterations, noticeable changes include a porch addition on the north façade, a shed-roofed addition on the east façade, and boarding up of some of the windows. Alternatives 1 and 3A will require a complete parcel take from this property, resulting in an Adverse Effect under Section 106 of the NHPA.</p> <p><i>2779 West 12600 South</i> This structure, built in 1935, was a former gas station that has been minimally altered (Attachment C: Photograph C). It is constructed of cinder block construction, the door and window have been boarded up and the entire structure painted gray. The brick sills on the front windows may not be original. Alternatives 1 and 3A will require the taking of this structure, resulting in an Adverse Effect under Section 106 of the NHPA.</p>
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	<p><i>11407 South 1300 West</i></p> <p>With regards to the historic property located at 11407 South 1300 West (Attachment C: Photograph D), this residence was constructed around 1901 in a Victorian Eclectic style. Only the rear half of the structure currently exists and it is uncertain as to how the structure came to its present condition (the Riverton CLG believes it resulted from a divorce settlement). Although currently vacant and in poor condition (i.e. hole in roof), the property is considered Locally Significant, more for its history (or folklore) associated with the residence rather than its architectural qualities. Given its age, condition, and half form, it is unlikely that it can be moved. Alternatives 1, 4, and 7 would require the removal of this structure, resulting in an Adverse Effect under Section 106.</p> <p><i>Fairbourn Farmsteads Historic District</i></p> <p>Comprised of numerous residences and a variety of outbuildings and cultural features, the Fairbourn Farmsteads Historic District provides historical data on the evolution of a complex of family farms that individually and collectively reflect the struggles and successes of an agrarian lifestyle dating from the 1880s to the present. The significance of the Fairbourn District is not related to how its individual components were originally constructed or crafted, but how they reflect an adaptation over a period of time. Contrary to the common view of what an historic district should look like, the Fairbourn District does not convey the characteristics of a distinctive type, period, or method of construction, the work of a master, or possess high artistic value. In fact, the Fairbourn District is comprised of features that lack individual distinction (Attachment C: Photographs E through H). The District derives its importance from the interrelationships of its resources (the individual family farmsteads and associated features), which convey a sense of its overall historic development. The District's importance can be understood and captured through historical documentation and preservation of its historic setting.</p> <p>Unfortunately, preservation is no longer an option since the Fairbourn District's historic integrity of setting, feeling, and association has recently succumbed to development pressures (Attachment C: Photographs I-L). Much of the historically cultivated land associated with the farmsteads is under commercial development. To the north of 11400 South, only small portions of the historic properties remain intact, although in</p>
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varying degrees of condition (Attachment C: Photographs M-P). If it were not for the fact that these properties are under the current ownership of UDOT, they too would most likely be demolished to make room for future commercial enterprises. If an alternative were to be selected that does not require the removal of these structures (No Build and Alternative 3A), UDOT may have to offer them back to the original owners due to Rights of First Refusal. Under this scenario, it is highly unlikely that these small parcels would remain intact or that the structures would not be demolished in short order given the value of the land for development. Aside from the salvaging of architectural elements or construction materials, the structures hold little historic or economic value that would make them good candidates for rehabilitation, restoration, or removal. Efforts on the part of FHWA and UDOT following the FONSI in 2000 included marketing of the structures with no success at that time due to the injunction. Although the local Certified Local Governments (CLGs) have expressed recent interest in salvaging material (i.e. bricks) from some of the residences within the District, there has been no interest in rehabilitating or restoring these properties. Therefore, preservation of the residences within the District is unlikely under all the alternatives, including the No Build. Because of the rapid reduction of the District's historic boundaries and hence its integrity, the mitigation for the project is centered on historic research and documentation of the District. This research and documentation will be accomplished through the completion of an Intensive Level Survey under Utah State Historic Preservation Office Guidelines (*Standard Operating Procedures for Intensive Level Survey* (1993)). The MOA executed for the project stipulates marketing efforts to be undertaken. In the event that the structures are not marketable, compensatory mitigation will be provided to the local historic commissions (CLGs) for project(s) that promote the preservation of other historic resources within the local communities. Alternatives 1, 4, and 7 require the removal of several of the contributing residences within the District, resulting in an Adverse Effect. Alternative 3A will only require a strip take along Lone Peak Parkway, resulting in a No Adverse Effect.

Bridge over Jordan and Salt Lake City Canal

This historic bridge spans the Jordan and Salt Lake City Canal on 11400 South at approximately 200 West (Attachment C: Photograph Q). The bridge was constructed in 1935 and is a single span structure with concrete T-beams and abutments and is representative of Depression-

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	era bridge structures. Alternative 3A avoids this bridge, while Alternatives 1, 4, and 7 would result in its taking, resulting in an Adverse Effect under Section 106 of the NHPA.
<p>Section 4(f) provides that the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, etc .. unless there is no feasible and prudent alternative to the use of such land, and such program includes all possible planning to minimize harm to the are resulting from such use. 49 U.S.C. § 1653 (f)(1)&(2). "Feasibility" as used in Section 4(f) focuses upon what "sound engineering" makes possible. <i>Citizen 's to Preserve Overton Park v. Volpe</i>, 401 U.S. 402, 411 (1971); <i>See also Committee to Preserve Boomer Lake v. Department of Transportation</i>, 4 F.3d 1543 (10th Cir. 1993). For this exception to apply, the Secretary must find that as a matter of sound engineering it would not be feasible to build the highway along another route. <i>Id.</i> "Prudence," as used in Section 4(f) connotes more than a "wide ranging balancing of competing interests." <i>Id.</i> An alternative is prudent if it does not present "unique problems." <i>Id.</i> "[O]nly the most unusual situations are exempted." <i>Id.</i> There are other alternatives to alternative 4 that fit this definition and meet the purpose and need and they were ignored due to agency bias or lack of compliance with of the operative law.</p>	<p>41. As mentioned previously, no prudent and feasible alternatives that would avoid all Section 4(f) resources could be identified, and of the prudent and feasible alternatives that were identified, none had less Section 4(f) impacts than the Preferred Alternative. The commenter appears to be focusing on impacts to Section 4(f) resources in the Jordan River Parkway to the exclusion of all of the other recreational and historic Section 4(f) resources that would be affected under the various alternatives, an approach that is legally impermissible. The agencies analyzed the impacts to <u>all</u> affected Section 4(f) resources, after the application of "all possible planning" to avoid or minimize those impacts, and then selected the alternative with the least overall net harm to Section 4(f) resources as the Preferred Alternative, in accordance with Section 4(f) requirements.</p>
<p>Where the area affected by an agency's decision is protected by Section 4(f), the agency bears a substantially higher burden than that of merely considering the environmental consequences. <i>Wade v. Lewis</i>, 561 F.Supp 913, 949 (N.D. Ill. 1983). As Justice Marshall stated in <i>Overton Park</i>:</p> <p>It is obvious that in most cases considerations of cost, directness of route, and community disruption will indicate that parkland should be used for highway construction wherever possible. Although it may be necessary to transfer funds from one jurisdiction to another, there will always be a smaller outlay required from the public purse when parkland is used since public already owns the land and there will be no need to pay for right-of-way. And since people do not live or work in parks, if a highway is built on parkland no one will have to leave his home or give up his business. Such factors are common to substantially all highway construction. Thus, if Congress intended these factors to be on equal footing with preservation of parkland there would have been no need for the statutes. Congress clearly did not intend that cost and disruption of the community were to be</p>	<p>42. See comment response #41.</p>

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<p>ignored by the Secretary. But the very existence of the statutes indicates that protection of parkland was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems.</p> <p>401 U.S. at 411-413.</p> <p>We disagree with the attempt by the drafters of the document and the agencies to distinguish between significant and insignificant 4(f) resources in the Jordan River Parkway. This exercise begins at page 5-19 and continues through page 5-22. Despite this impermissible exercise in "hair-splitting" there is only one conclusion that may be reached - - there will be significant constructive and direct uses of the Jordan River Parkway and Willow Creek Park in addition to the taking of the historic properties. The existence of other feasible and prudent alternatives requires the elimination of any alternative that contains the interchange, widened road and bridge crossing at 11400 South.</p>	
<p>Another conclusion begins to emerge at this point in time. If the impacts of all of these alternatives to 4(f) resources are so bad and so involved, then perhaps the no-build alternative is the only feasible and prudent alternative remaining. That is the alternative that should have been selected, perhaps in combination with the specific improvements previously mentioned.</p>	<p>43. The No Build Alternative does not meet the project purpose and need for improving mobility within the study area. As previously noted, the traffic analysis conducted for the FEIS shows that under the No Build scenario, there will be significant mobility problems within the study area even after all the planned roadway and transit projects identified on the LRP have been completed.</p>
<p>Based on the foregoing, we request that a Record of Decision not be issued based upon this document. The appropriate approach would be to begin a new EIS process for the Southwest quadrant of the Salt Lake Valley that utilizes proper process and procedures.</p>	<p>44. The Record of Decision is based on the analysis presented in the FEIS/Section 4(f) Evaluation, which FHWA considers to be an adequate and thorough analysis of the project alternatives and impacts. After independently reviewing that document, the administrative record, technical reports and public input, FHWA has selected the Preferred Alternative, identified as Alternative 4 in the FEIS, for improvements to the 11400 South Study Area. The selection of the Preferred Alternative was based on an evaluation of information found in the FEIS, a variety of technical and engineering analyses, and substantial input from the public, local governments, and various federal and state agencies.</p>